

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

ALLEN HIRATSUKA,

Petitioner,

v.

EARL HOUSER,

Respondent.

Case No. 3:21-cv-00018-SLG-MMS

**ORDER RE: CERTIFICATE OF APPEALABILITY**

At Docket 67 is an order from the Ninth Circuit Court of Appeals remanding the above captioned action to this Court for the limited purpose of granting or denying a certificate of appealability.

Mr. Hiratsuka is a state pretrial detainee, who brought a *Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241*.<sup>1</sup> The Magistrate Judge recommended the *Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241* be denied without prejudice because Mr. Hiratsuka was challenging ongoing state criminal proceedings.<sup>2</sup> The Court reviewed and adopted the Magistrate Judge's Report and Recommendation, dismissing the action without prejudice.<sup>3</sup> Neither the Magistrate Judge's Report and Recommendation nor the District Court's Order

---

<sup>1</sup> Docket 1.

<sup>2</sup> Docket 58.

<sup>3</sup> Docket 63.

Re: Final Report and Recommendation addressed the issuance of a certificate of appealability.

28 U.S.C. § 2253(c) requires that an appeal from a habeas corpus proceeding brought by a state prisoner may not advance unless a district or circuit court judge issues a certificate of appealability. A certificate of appealability may only issue if the petitioner-appellant has made a substantial showing of the denial of a constitutional right.<sup>4</sup>

The Court finds that Mr. Hiratsuka has not made the requisite showing of the denial of a constitutional right; therefore, a certificate of appealability will not be issued by this Court.<sup>5</sup> Mr. Hiratsuka may request a certificate of appealability from the Ninth Circuit Court of Appeals.

DATED this 9th day of March, 2022 at Anchorage, Alaska.

/s/ Sharon L. Gleason  
UNITED STATES DISTRICT JUDGE

---

<sup>4</sup> 28 U.S.C. § 2253(c)(2).

<sup>5</sup> 28 U.S.C. §§ 2255(d), 2253(c)(2). See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (certificate of appealability may be granted only if applicant made a “substantial showing of the denial of a constitutional right,” *i.e.*, a showing that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further” (internal quotations and citations omitted)).